



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Consideration of a Resolution Establishing Procedures for the Consideration of Pre-Annexation and Development Agreements

MEETING DATE: November 2, 2005 City Council Meeting

PREPARED BY: City Attorney's Office

RECOMMENDED ACTION: That the City Council adopt a resolution establishing procedures for the consideration of Pre-Annexation and Development Agreements.

BACKGROUND INFORMATION: Cities are required by Government Code §65865 to have established procedures to consider development agreements upon request by a developer. Consequently, the attached Resolution outlines procedures for the consideration of new development agreements by the City.

DEVELOPMENT AGREEMENTS GENERALLY:

Development agreements are intended to provide certainty in the development process. A development agreement typically provides assurances to the developer that the project can proceed without the City unilaterally altering the rules applicable to the project, such as density, intensity of use, parking standards, etc., or imposing new fees on the project. Benefits to the City include allowing the City to obtain negotiated benefits it could not otherwise exact. A development agreement is a discretionary and legislative act on the part of the City Council. A developer does not have an absolute, unconditional right to a development agreement. Each request for a development agreement is judged on its own merit which is one of the purposes behind the attached procedures—to enable the City to effectively evaluate a development agreement proposal.

PRE-ANNEXATION AGREEMENTS:

Government Code Section 65865(b) authorizes cities to enter into pre-annexation agreements with those having a legal or equitable interest in real property within the City's sphere of influence. Such pre-annexation agreements have been recognized by California courts and upheld, see *Morrison Homes Corporation v. City of Pleasanton* (1976) 58 Cal.App.3d 724. In order to proceed with the consideration of any pre-annexation development agreements, it is necessary to have the appropriate procedures adopted by the City Council which meet the requirements of the Government Code.

The pre-annexation agreement, once adopted, cannot become operative until the annexation process is complete. The agreement must provide a time period during which the annexation is to be completed. If the annexation is not completed within the time specified in the agreement, or any extension thereto, the agreement becomes null and void and of no legal effect.

APPROVED:

A handwritten signature in black ink, appearing to read "Blair King for".
Blair King, City Manager

PROCEDURES TO CONSIDER DEVELOPMENT AGREEMENTS OR PRE-ANNEXATION AGREEMENTS:

The attached Resolution provides that a developer desiring a development (or pre-annexation) agreement must provide some public benefit to balance the City's commitment to freeze current regulations. This is designed to ensure that the City receives a good deal in return for development commitments. The procedures also require a developer who desires to have an agreement to deposit the sum of \$5,000 with the City in order to pay costs to process that agreement. Experience in other cities indicates that a substantial deposit ensures that the applicant is serious about pursuing the agreement, and that city costs are easily recoverable. Frequently, the costs incurred in processing an agreement exceed this initial deposit, and the procedures allow the city to recover the difference.

The attached Resolution requires the City Attorney to make an initial determination that the proposed agreement is legally sufficient and enforceable, as well as consistent with the requirements of the Resolution. The Community Development Director next makes a determination regarding the proposed agreement and how the City's current plans and regulations are to address the proposed development. The Community Development Director also reports on the proposed public benefits as a balance for development commitments. The Planning Commission is required to review the proposed Development Agreement under both the procedures and State law. A development agreement must then be considered at a public hearing.


Once the Planning Commission acts on the development agreement, the City Council is required to hold a public hearing and can only approve a development agreement by ordinance.

The procedures, consistent with the requirements of State law, require the agreement to be reviewed annually to determine compliance with its terms and conditions. If the terms and conditions are not being lived up to by the developer, the City may terminate or amend the agreement. In addition to the annual review, the City may review any violation of a term or condition of the agreement and take appropriate action.

There is no fiscal impact anticipated at this time as the Resolution contains a cost recovery provision.

Based upon the foregoing, the City Attorney's Office recommends that the City Council approve the attached Resolution.

FISCAL IMPACT: No fiscal impact to the City because costs will be reimbursed to the City of Lodi through the Development Agreements.



D. Stephen Schwabauer
City Attorney

RESOLUTION NO. 2005-237

A RESOLUTION OF THE LODI CITY COUNCIL
ESTABLISHING PROCEDURES FOR THE CONSIDERATION
OF PRE-ANNEXATION AND DEVELOPMENT AGREEMENTS

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Development Agreements

WHEREAS, the State Legislature, pursuant to Government Code Section 65864 *et seq.*, has authorized the City to enter into development agreements which provide greater certainty to developers to proceed with approved projects according to local policies and regulations; and

WHEREAS, Government Code Section 65867 requires a public hearing before the planning agency and the legislative body prior to the adoption of a development agreement; and

Pre-Annexation Agreements

WHEREAS, Government Code Section 65865(b) authorizes cities to enter into pre-annexation and annexation agreements with those having a legal or equitable interest in real property within a city's sphere of influence.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI HEREBY RESOLVES, DETERMINES, FINDS, AND ORDERS AS FOLLOWS:

Section One. As a policy, development agreements and/or pre-annexation/annexation agreements should include public benefit(s), beyond those already forthcoming through project approvals and normal impact fees and conditions, in return for commitments to maintain present plans and regulations for determinate periods.

Section Two. The following procedures are approved:

A. Application.

1. Consideration of a development agreement, including pre-annexation/annexation agreement, (Article 2.5, Chapter 4, Title 7 of the Government Code, beginning with Section 65864) shall be initiated by the property owner ("Applicant") filing an application for such consideration with the Community Development Director. The Applicant shall have at the time the application is made a legal or equitable interest in the property. The application shall include:

- (a) A proposed agreement, which conforms to the form approved by the City Attorney and shall include the following:
 - (i) A legal description of the property sought to be covered by the agreement.
 - (ii) A description of the proposed uses, maximum height and size of proposed buildings, density or intensity of use, and provision for reservation or dedication of land for public purposes.
 - (iii) Conditions, terms, restrictions, and requirements for subsequent City discretionary actions.

- (iv) Proposed time when construction would be commenced and completed, including a phasing plan.
 - (v) Proposed public benefits inclusive of an implementation phasing plan.
 - (vi) Termination date for the agreement, recommended at ten (10) years but subject to negotiation.
- (b) Sufficient information to enable the Community Development Director to perform an initial study pursuant to Public Resources Code Section 21160.
 - (c) Sufficient information to establish that the project is consistent with the City's General Plan.
 - (d) Such other information as the Community Development Director may require.

2. The application shall be accompanied by a five thousand dollar (\$5,000) deposit fee to cover processing costs including but not limited to staff time, legal fees, and professional fees. Any overage shall be refunded subsequent to adoption of the agreement or upon termination of the application. Processing costs greater than \$5,000 shall be billed in advance by depositing additional funds in an amount that the Community Development Director may require based on estimated cost of remaining processing. A greater deposit may be required by the City Manager in complex matters.

B. Recommendation and Transmittal.

1. The City Attorney shall transmit a letter to the Community Development Director indicating that the proposed agreement is legally sufficient and in accordance with the requirements of this Resolution.

2. The Community Development Director, shall, in accordance with adopted City procedures for implementation of California Environmental Quality Act, "CEQA," prepare appropriate environmental documentation and, upon completion of such documentation, shall transmit the application, together with the Community Development Director's report, detailing the:

- (a) Adequacy of existing plans and regulations;
- (b) Consistency with General Plan and any applicable specific plan;
- (c) Analyzing the proposed public benefit(s) as a balance for development commitments; and
- (d) Indicating why such benefit(s) should/should not be adequate to the Planning Agency.

C. Planning Commission Action.

1. Upon receipt of the application, environmental documentation, completion of the Community Development Director's report, receipt of the City Attorney's letter, and an executed copy of the Agreement by the Applicant, the Community Development Director shall schedule a public hearing on the application before the Planning Commission. The hearing

shall be preceded by public notice given pursuant to Government Code Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the application.

2. Following the public hearing, the Planning Commission may recommend approval, disapproval, or approval as modified by the Planning Commission of the application and transmit the same on to the City Council for consideration.

D. City Council Action.

1. Upon receipt of the application, environmental documentation, Community Development Director's Report, City Attorney's letter, and Planning Commission recommendation, the City Clerk shall schedule a public hearing on the application. The hearing shall be preceded by public notice given pursuant to Government Code Sections 65090 and 65091 in addition to any other notice required by law for other actions to be considered concurrently with the application.

2. The City Council may consolidate the public hearing by the Planning Commission with the City Council public hearing.

3. Following the public hearing, the City Council may approve, disapprove, or approve as modified by the City Council the application and, if approved or approved as modified, adopt an ordinance approving the agreement. Said agreement shall not become effective prior to its execution by the Mayor or any other limitations set out in the agreement or its adopting Ordinance.

4. Within ten (10) days after the City executes a development agreement, the City Clerk shall cause a copy thereof to be recorded with the County Clerk/County Recorder of the County of San Joaquin.

E. Annual Review.

1. All development projects subject to the agreement shall be reviewed by the Community Development Director once every twelve (12) months concurrent with the applicant's (hereinafter referred to as "PROPERTY OWNER" for purposes of describing the non-City parties to the agreement) submittal of an Annual Monitoring Report.

2. The purpose of the review shall be to inquire into the good faith compliance of the PROPERTY OWNER with the terms of the agreement and any other matters which may be specified in said agreement.

3. Prior to each review, the PROPERTY OWNER shall file a report with the Community Development Director as to development which has occurred under the agreement subsequent to the last past review and any other matters which the PROPERTY OWNER wishes to bring to the Community Development Director's attention.

4. The Community Development Director shall prepare an annual review report and set the matter for public hearing by the Planning Commission for recommendation to the City Council. The City Council shall hold a public hearing on the annual review report and consider said report and recommendations by the Planning Commission and approve, modify or terminate.

5. The PROPERTY OWNER or any successor to PROPERTY OWNER shall reimburse the City for all costs of the annual review process apportionable to that agreement and shall pay a deposit of \$1,000.

F. Termination, Cancellation, Modification, and Amendment of Development Agreements.

1. Any development agreement may be amended by mutual consent of the PROPERTY OWNER and the City Council or cancelled by the City Council in the same manner as set forth above for entering into such agreement.

2. If, as a result of a periodic review, the City Council finds and determines, on the basis of substantial evidence, that the PROPERTY OWNER or successor in interest has not complied in good faith with the terms and conditions of the agreement, the City Council may terminate or modify the agreement. Notice of intention to amend or cancel in whole or in part shall be given pursuant to Government Code Section 65867.

3. In the event state or federal law or regulations established after the agreement is approved prevent or preclude compliance with one or more provisions of the agreement, the provisions of the agreement shall be modified or suspended as may be necessary to comply with such new law or regulation.

Section Three. The procedures set forth above shall be applicable to pre-annexation and annexation agreements in accordance with Government Code Section 65865(b) and the agreement shall not become operative unless the property subject to the agreement is successfully annexed to the City within the time period specified in the agreement or any extension thereof. In the event the annexation is not completed within the time specified in the agreement, or any extension thereof, the agreement shall become null and void.

Dated: November 2, 2005

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I hereby certify that Resolution No. 2005-237 was passed and adopted by the Lodi City Council in a regular meeting held November 2, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk